THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.2849 OF 2004

DATED: 16th MARCH, 2006.

Between :

Sri Louis D-Rose … Petitioner

And

1. The S.H.O., Uppal Police Station,
   Rangareddy District.
2. The Commissioner of Police,
   Cyberabad. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.2849 OF 2004

ORDER :

This writ petition is filed seeking a declaration that the alleged action of the 2nd respondent – Commissioner of Police, Cyberabad Police Commissionerate in not disposing of the representation of the petitioner dated 30-1-2004 complaining about the illegal and highhanded behaviour of the 1st respondent – Station House Officer, Uppal Police Station while arresting the petitioner and his family members as arbitrary and illegal and also direct the 1st respondent to take disciplinary action against the culprits and to pay a compensation of Rs.5,00,000/- towards the medical expenses and damage caused to the petitioner and his family members.

In the representation dated 30-01-2004 submitted to the 2nd respondent – Commissioner of Police, a copy of which is placed before this Court, the petitioner alleged that on 2-10-2003 a crime was registered against the petitioner and his wife and other family members by the S.H.O., Uppal PS for the offences punishable under Sections 147, 427, 448, 307 read with 149 of I.P.C. It is further alleged that the SHO, Uppal PS who bore grudge against them has registered the said crime on a false complaint and detained them in illegal custody for more than four days. He also beat them very harshly and threatened them with dire consequences if they disclose the same in the Court. Under the threats of the SHO, they could not disclose anything in the Court. Thereafter, when they were lodged in the prison, the Jail Authority having found the fractures and other injuries on the body of the petitioner and other family members got them admitted in the Prison Hospital from where they were referred to Gandhi Hospital and Osmania Hospital for treatment. After release on bail, they were again treated in a private hospital spending a lot of hard-earned money. Hence, the 2nd respondent was requested to conduct departmental enquiry by conducting personal identification parade of the police personnel who beat them and illegally detained them at Uppal P.S. and also to pay compensation to the petitioner and his family members for the expenses incurred for treatment and other losses suffered.

The grievance of the petitioner in this writ petition is that the 2nd respondent failed to

take any action on the above representation submitted by him.

The 2nd respondent – Commissioner of Police filed a counter-affidavit stating that on 2-10-2003 one E. Krishna lodged a written complaint in Uppal P.S. stating that while he was working in the house of C. Ramachandraiah, his neighbour Vajramma @ Vajra D.Rose (the petitioner's wife) picked up a quarrel with the family members of C.Ramachandraiah and since then there were altercations among them. Subsequently, C. Ramachandraiah expired, however the petitioner's wife has been threatening the complainant i.e., E. Krishna with dire consequences on a suspicion that he is practising Banamathi and Sorcery on her family members. That apart, she along with her husband, daughter, son and two other relatives, all of a sudden attacked on the house of the complainant armed with sticks and axes and damaged the household articles. The accused Vajramma also attempted to kill him. They also assaulted the brother and sister-in-law of the complainant. Basing on the said complaint, Cr.No.513 of 2003 was registered under Sections 147, 448, 427, 307 read with 149 of I.P.C. on the file of Uppal P.S. The Sub-Inspector of Police, Uppal P.S. having taken up the investigation, visited the spot and apprehended the accused i.e., the petitioner and his four other family members. The accused were physically produced before the Magistrate on 3-10-2003 and they were again produced in the Court on 6-10-2003. The petitioner neither stated nor reported the alleged injuries sustained by him and his family members either in the Court or while entering in the jail premises. Having received a copy of the representation from this Court, the Assistant Commissioner of Police, Malakajgiri was directed to conduct necessary enquiry and report. Accordingly, the A.C.P., Malkajgiri, after causing enquiry, submitted his report dated 27-2-2004 stating that the allegations made by the petitioner are false and baseless and that the S.H.O., Uppal has acted in accordance with law. It is further stated that the petitioner and his wife are litigants and hard-core criminals who are involved in petty cases.

A separate counter-affidavit has been filed by the 1st respondent, who is working at present as Sub-Inspector of Police at Chandanagar P.S. denying all the allegations made by the petitioner.

I have heard the writ petitioner who appeared in person as well as the learned Government Pleader for Home appearing for the respondents and perused the material on record.

As can be seen from the averments in the affidavit of the petitioner, which are not contradicted by the respondents, admittedly basing on a private complaint made by the wife of the petitioner on 29-9-1999, Cr.No.319/1999 was registered earlier in the Uppal P.S. against one C. Ramachandraiah and his wife, however after investigation the case was referred as mistake of fact on 15-10-1999. Subsequently, on a complaint by C. Ramachandraiah against the wife of the petitioner, the S.H.O., Uppal P.S. registered a petty case being S.T.C.No.965/1999 under Sections 290 and 323 of the Indian Penal Code, which ended in acquittal as the complainant died. Thereafter, on 23-9-2000 on a complaint made by the wife of the petitioner against the Sarpanch of Medipally village and five others, who are alleged to be close associates and friends of C.Ramachandraiah, Cr.No.330 of 2000 was registered under Section 324 of I.P.C. in Uppal P.S. and the same is pending trial vide C.C.No.234 of 2001 in the Court of the Additional Judicial Magistrate of First Class, East & North, R.R. District.

Subsequently, on a complaint lodged by one E. Krishna, who was earlier working with C.Ramachandraiah, Cr.No.513 of 2003 on the file of S.H.O., Uppal P.S. was registered against the petitioner, his wife and other family members, in connection with which they were arrested on 2-10-2003. The petitioner made serious allegations against the S.H.O., Uppal P.S. – the 1st respondent herein alleging that the 1st respondent severely beat them, and also outraged the modesty of his wife, minor daughter and a lady relative who is no way connected to the present case and abused them in filthy language. Though the allegations that the 1st respondent outraged the modesty of the wife of the petitioner and abused in filthy language did not find place in the representation dated 30-1-2004, the petitioner had clearly stated that they were detained in illegal custody by the 1st respondent for more than four days and that they were beaten harshly, due to which the petitioner, his wife as well as other lady member suffered fractures. It appears that the 2nd respondent came to know about the representation after the writ petition is filed and

immediately thereafter the 2nd respondent caused an enquiry into the allegations in the representation dated 30-1-2004 and a copy of the report submitted by the Assistant Commissioner of Police, Malkajgiri, dated 26-2-2004 has been placed before this Court. The said report shows that the petitioner and his family members were arrested on 2-10-2003 at 16.00 hours by the 1st respondent with the help of his staff including women police constable and interrogated them in which the accused themselves stated that they were suffering from ill-health since a long time and that they suspect E. Krishna who was practising Sorcery. The 1st respondent after preparing a remand case diary produced the accused persons i.e., the petitioner and others before the Additional Judicial First Class Magistrate, East & North, R.R. District at his residence on 3-10-2003 beyond 24 hours of their arrest. From 3-10-2003 to 5-10-2003 being public holidays, the learned Magistrate ordered police custody and accordingly they were produced in the Court on 6-10-2003. Then, they were remanded to judicial custody. On completion of investigation, the 1st respondent filed Charge-sheet on 25-11-2003 and P.R.C.No.186 of 2003 is still pending. The report also shows that the allegation that the 1st respondent beat the petitioner and his family members is not proved and they were not detained in illegal custody as alleged. However, the petitioner filed affidavits in reply and disputed the version of the respondent as well as the report of the Assistant Commissioner of Police.

It is relevant to note that this Court by order dated 19-4-2004 directed an enquiry by the Additional Judicial Magistrate of First Class, Hyderabad East & North, R.R. District. In compliance with the same, the learned Magistrate submitted a report dated 3-7-2004 stating that during the enquiry the statements of the writ petitioner and his family members were recorded on oath and all of them stated that they were confined in police lock up for five days and were ill-treated by the police. The Medical Officer, Central Prison, Cherlapalli also appeared before the learned Magistrate on 29-6-2004 and submitted Photostat copies of the medical record relating to the writ petitioner. According to the Medical Officer, no bone injury was noticed on left ankle of the petitioner and he also stated that original medical record was given to the accused with the permission of the Superintendent.

It is to be noted that whereas the specific case of the petitioner is that the 1st

respondent and his staff detained the petitioner and his family members illegally and, while they were in the police custody, ill-treated and beat them heavily and also outraged the modesty of his wife and daughter, the 1st respondent denies all the said allegations.

The enquiry report by the Assistant Commissioner of Police, Malkajgiri shows that the accused were produced before the learned Magistrate on 3-10-2003 itself, however the petitioner points out that it was beyond 24 hours of their arrest and the same is contrary to law apart from the specific guidelines laid down by the Supreme Court in D. K. BASU v. STATE OF WEST BENGAL.

Though the petitioner who appeared in person cited various other decisions of the Supreme Court, keeping in view the scope of the present writ petition it is not necessary to refer to the same.

It is to be noted that even in the report submitted by the learned Judicial First Class Magistrate, R.R. District, though the sworn statements of the accused were recorded, no finding as such was recorded as to the allegations made by the petitioner.

In the light of the circumstances explained by the 2nd respondent in his counter-affidavit, though it cannot be held that there was any inaction on the part of the 2nd respondent in considering the representation made by the petitioner dated 30-1-2004, I am of the opinion that the allegations made by the petitioner which are very serious in nature and which undoubtedly infringe the Fundamental Rights guaranteed under Article 21 of the Constitution of India, require further probe and necessary action. However, since the matter involves several disputed questions of fact which can be decided only on appreciation of both oral and documentary evidence that may be adduced by the parties, it is neither proper nor possible for this Court to arrive at any conclusion on the strength of the mere affidavits of the parties and the reports received from the Assistant Commissioner of Police and the Additional Judicial Magistrate of First Class, East & North, R.R. District. In the

absence of any finding that the allegations made by the petitioner are established, there cannot be any direction either for initiating disciplinary action against the 1st respondent or for payment of compensation as claimed by the petitioner at this stage.

Instead, since admittedly the proceedings on the basis of the charge-sheet filed in Cr.No.513 of 2004 are pending in the Court of Additional Judicial First Class Magistrate, East & North, R.R. District, I deem it appropriate to dispose of the writ petition with a direction to the learned Magistrate to make a thorough enquiry into all the allegations made by the petitioner and in case the allegations made by the petitioner are established, the 2nd respondent shall initiate appropriate disciplinary proceedings against the officials concerned in accordance with law. That apart, the petitioner is also granted liberty to initiate appropriate proceedings with regard to his claim for compensation in case the allegations made by him are found to be true by the learned Magistrate in the enquiry that may be conducted.

Writ Petition is accordingly disposed of with the above directions. No costs.

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G. ROHINI, J.

Dt.16-03-2006.

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